

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELANIE J DUNPHY
Claimant

APPEAL NO. 20A-UI-09042-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

OC: 03/29/20
Claimant: Appellant (4R)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Melanie Dunphy filed a timely appeal from the July 22, 2020, reference 02, decision that held she was overpaid \$7,696.00 for 16 weeks between March 29, 2020 and July 18, 2020, based on another decision that denied benefits in connection with an able & available determination. The reference 02 decision also held that Ms. Dunphy was subject to a 15 percent penalty and other administrative penalties, based on a determination that Ms. Dunphy had received the benefits through misrepresentation. After due notice was issued, a hearing was held on September 15, 2020. Ms. Dunphy participated. Danial Noonan, Investigator II, Iowa Workforce Development Integrity Bureau, participated in the hearing. Exhibits 1 through 11 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A and the online Unemployment Insurance Handbook.

ISSUE:

Whether the claimant was overpaid benefits.

Whether the claimant is subject to a 15 percent penalty due to misrepresentation and other administrative penalties in connection with the overpayment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Melanie Dunphy established an original claim for benefits that was effective March 29, 2020. When Ms. Dunphy completed her online application for benefits, she acknowledged that she would read, understand and follow the information contained in the online Unemployment Insurance Handbook. The Handbook included instructions for reporting weekly wages as part of a weekly claim.

At the time Ms. Dunphy established her claim for benefits, she was employed by Baxter Construction Company as a full-time project administrator. Ms. Dunphy has been with that employer since 2016 and Baxter Construction is the sole base period employment. After Ms. Dunphy filed her claim for benefits, she continued to be employed by Baxter Construction

Company and to receive full-time wages from that employment. Ms. Dunphy's weekly wages from that employment averaged \$1,107.15 during the second quarter of 2020.

Ms. Dunphy has a side-business as a massage therapist. Ms. Dunphy established her claim for unemployment insurance benefits in response to a COVID-19 based government-mandated temporary shut-down of the self-employment venture. Ms. Dunphy advises that when she is able to operate her business, she performs 10 to 15 massages per week for \$70.00 per message and generates \$700.00 to \$1,000.00 in weekly revenue.

After Ms. Dunphy established her original claim for benefits, she made weekly claims for each of the 16 weeks between March 29, 2020 and July 18, 2020. To make the weekly claims, Ms. Dunphy had to follow the only weekly claim reporting process. The online weekly claim reporting process included a series of questions for Ms. Dunphy to answer to complete her weekly claim. These included questions about whether she had worked during the preceding week, whether the work had been for an employer, self-employment or both, and what the pay had been. To complete her weekly claim, Ms. Dunphy had to review her responses to the questions and certify the accuracy of the information she had provided. Ms. Dunphy is a first-time claimant. Before Ms. Dunphy filed her first weekly claim, she contacted Iowa Workforce Development for guidance. An Iowa Workforce Development representative instructed her to complete the weekly claim information based on what was happening with her self-employment venture. Ms. Dunphy took that to mean that she should omit information concerning her full-time employment. For each of the 16 weeks in question, Ms. Dunphy reported that she had not worked, and that she had zero wages, by which information she intended to communicate that she had not worked in her self-employment venture and had no earnings from that venture. If Ms. Dunphy had reported her wages from Baxter Construction, those weekly wages would have reduced her unemployment insurance benefit eligibility to zero. Omission of those wages resulted in Ms. Dunphy receiving \$481.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the 16 weeks in question. The regular benefits paid to Ms. Dunphy for the period of March 29, 2020 through July 18, 2020 totaled \$7,696.00.

On July 21, 2020, Ms. Dunphy participated in a fact-finding interview, during which Ms. Dunphy answered questions about her full-time employment. Ms. Dunphy referenced the massage therapy work as the basis for her claim. During the fact-finding interview, Ms. Dunphy told the deputy she had been told by IowaWORKS not to report the wages from her full-time employment.

The government mandated shut-down of Ms. Dunphy's business ended on June 1, 2020. However, Ms. Dunphy's clients did not begin to return until August 1, 2020.

An Iowa Workforce Development investigator reviewed the discrepancy between Ms. Dunphy's weekly wage reports and the quarterly wage report provided by the Baxter Construction, along with the fact-finding questionnaires and concluded, without speaking to Ms. Dunphy, that she had intentionally misrepresented her wages when making her weekly claims.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.3(7)(a) provides:

Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Iowa Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Code section 96.16(4)(a) and (b) provides:

Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. The department shall assess a penalty equal to fifteen percent of the amount of a fraudulent overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

“Fraud” means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury. Iowa Admin. Code r. 871- 25.1. “Misrepresentation” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth. Iowa Admin. Code r. 871- 25.1

The evidence in the record establishes that Ms. Dunphy was indeed overpaid \$7,696.00 in regular unemployment insurance benefits for the period of March 29, 2020 through July 18, 2020. Her full-time employment and the wages from her full-time employment prevented her from being an unemployed person within the meaning of the law. The weekly full-time wages were deductible from the unemployment insurance benefit eligibility and far exceeded the weekly benefit amount. Had Ms. Dunphy correctly reported her weekly wages as part of the weekly claims reporting process, her benefit eligible for each week of the claim would have been zero. Through Ms. Dunphy’s erroneous omission of the full-time wages from her weekly claim, she received \$481.00 in benefits for each of the 16 weeks in question. Ms. Dunphy is required to repay the \$7,696.00 in overpaid benefits.

The weight of the evidence does not establish fraud or intentional misrepresentation. Ms. Dunphy is a first-time claimant. Ms. Dunphy contacted the Agency in good faith for guidance in making her weekly claims and followed in good faith the guidance she received as she understood it. Ms. Dunphy’s misunderstanding was not tantamount to fraud or intentional misrepresentation. This distinction could have been discerned earlier if the Agency had interviewed Ms. Dunphy as part of its investigation of alleged wrongdoing.

This matter will be remanded to the Integrity Bureau for entry of a non-fraud based overpayment decision regarding the FPUC benefits the claimant received for the period of March 29, 2020 through July 18, 2020.

DECISION:

The July 22, 2020, reference 02, decision is modified in favor of the claimant as follows. The claimant was overpaid \$7,696.00 in regular benefits for the 16 weeks between March 29, 2020 and July 18, 2020. The claimant must repay the overpaid benefits. The overpayment was not based on fraud or intentional misrepresentation and no administrative penalty shall apply.

This matter is remanded to the Integrity Bureau for entry of a non-fraud based overpayment decision regarding the FPUC benefits the claimant received for the period of March 29, 2020 through July 18, 2020.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

October 15, 2020
Decision Dated and Mailed

jet/sam